

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

ZHN, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CIV-12-1289-M
	)	
RANDY MILLER, LLC, et al.,	)	
	)	
Defendants.	)	

**NOTICE OF SUBPOENA DUCES TECUM**

Notice is hereby given that Plaintiff, ZHN, LLC, is serving the attached Subpoena Duces Tecum on Larry Theurer and Theruer Auction / Realty seeking production of documents on January 30, 2015. Objections to the production of documents, if any, should be made by January 27, 2015.

/s/ Murray E. Abowitz  
Murray E. Abowitz, OBA No. 0117  
George W. Dahnke, OBA No. 2131  
ABOWITZ, TIMBERLAKE & DAHNKE, P.C.  
Post Office Box 1937  
Oklahoma City, Oklahoma 73101  
Telephone: (405) 236-4645  
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E-mail: [mea@abowitzlaw.com](mailto:mea@abowitzlaw.com)  
[gwd@abowitzlaw.com](mailto:gwd@abowitzlaw.com)  
[mainmail@abowitzlaw.com](mailto:mainmail@abowitzlaw.com)

**ATTORNEY FOR PLAINTIFF, ZHN, LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 15th day of January 2015, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic filing to the following ECF registrants:

Randy J. Long                      [randy@nwoklaw.com](mailto:randy@nwoklaw.com)  
Clint A. Claypole                [clint@nwoklaw.com](mailto:clint@nwoklaw.com)

**Attorneys for Defendant, Randy Miller, LLC  
and Randy L. Miller, Individually**

Timothy S. Harmon              [timharmon@holdenlitigation.com](mailto:timharmon@holdenlitigation.com)  
Shawna L. McCalip              [ShawnaMccalip@HoldenLitigation.com](mailto:ShawnaMccalip@HoldenLitigation.com)

**Attorneys for Defendants, Lippard Auctioneers, Inc.  
Troy Lippard, Angie Lippard, Brady Lippard,  
Jerry Whitney and United Country Real Estate, Inc.  
d/b/a United Country**

/s/ Murray E. Abowitz  
Murray E. Abowitz

**Issued by the**  
**UNITED STATES DISTRICT COURT**  
**WESTERN DISTRICT OF OKLAHOMA**

ZHN, LLC,  
 Plaintiff,

**SUBPOENA IN A CIVIL CASE**

V.

RANDY MILLER, LLC,, et al.,  
 Defendants.

Case Number:<sup>1</sup> CIV-2012-1289-M

TO: Larry Theurer and Theurer Auction / Realty  
 1101 East 16th Street  
 Wellington, Kansas 67152

☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):


See Exhibit "A" attached.

PLACE Northwest Printing Inc., 120 North Independence Street, Enid, Oklahoma 73701	DATE AND TIME January 30, 2015, 9:00 am
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☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)  Attorney for Plaintiff	DATE January 15, 2015
--	--------------------------

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER Murray E. Abowitz Abowitz, Timberlake & Dahnke, P.C. 105 North Hudson, 10th Floor Oklahoma City, Oklahoma 73012	Telephone: (405) 236-4645 Fax: (405) 239-2843
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(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

AO88 (Rev. 1/94) Subpoena in a Civil Case

## PROOF OF SERVICE

SERVED

DATE

PLACE

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance,
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend

trial be commanded to travel from any such place within the state in which the trial is held, or

- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in who behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

**Exhibit "A"**

**Definitions and Instructions**

1. Pursuant to Rule 45 of the Federal Rules of Civil Procedure, you are hereby commanded to produce the documents and other items described in the following on January 30, 2015, by delivering such items to the following for duplication at the expense of Plaintiff:

Northwest Printing  
120 North Independence  
Enid, Oklahoma  
Telephone: (580) 234-0953

2. In order to allow objections to the production of documents and things to be filed, you should not mail or produce them until the date specified and if an objection is filed, you should not mail or produce them until the Court rules on the objection. Otherwise, you are instructed to deliver the documents to the above on January 30, 2015.

3. In the event you have questions or need further information, please contact either Murray E. Abowitz, Esquire or Debbie J. Crabb, Paralegal.

4. In the event you withhold any documents or other materials on grounds of privilege or otherwise, please provide a list of such documents or items and as to each such document or item, identify: (a) the date; (b) the author; (c) the addressee; (d) the nature of the document or item withheld; and (e) the grounds upon which the document or item is being withheld.

5. "Documents" as used herein means and includes without limitation any kind of written, printed, typed, recorded, electronic, graphic, photographed, or photocopied matter, including all non-identical copies and drafts of such matter, attachments to or enclosures with such matter.

6. "Auction" shall refer to the two day absolute, no-reserve auction of approximately 9,700 surface acres and approximately 3,580 mineral acres located in Grant County, Oklahoma, offered by Lippard Auctioneers, Inc. on behalf of owner and seller, Randy Miller, LLC on May 3-4, 2012.

7. "Miller" shall refer to Defendant, Randy Miller, LLC and/or Randy Miller, individually, or any person authorized to act on behalf of Defendant in any manner, including but not limited to employees, officers, directors, agents and persons retained by Defendant.

**Description of Documents and Items to be Produced**

1. All documents which evidence, refer or relate to any auction in which LMZ, LLC was a bidder or buyer, including but not limited to auction solicitation books, lists of successful bidders, lists of runner up bidders, records of bids, audio and video recordings from the auction(s) and contracts evidencing the items sold during the auction.

2. All documents which evidence, refer or relate to any auction in which ZHN, LLC was a bidder or buyer, including but not limited to auction solicitation books, lists of successful bidders, lists of runner up bidders, records of bids, audio and video recordings from the auction(s) and contracts evidencing the items sold during the auction.

3. All documents which evidence, refer or relate to any auction in which Alex Magid participated on behalf of any entity, including but not limited to auction solicitation books, lists of successful bidders, lists of runner up bidders, records of bids, audio and video recordings from the auction(s) and contracts evidencing the items sold during the auction.

4. All documents which evidence, refer or relate to communications between you or any of your representatives and any of the following, relating to the Auction, any auction in which LMZ, LLC, ZHN, LLC or Alex Magid participated or this lawsuit:

- (a) Troy Lippard;
- (b) Angie Lippard;
- (c) Brady Lippard;
- (d) Jerry Whitney;
- (e) Randy Miller;
- (f) Any representative of United Country Real Estate; or
- (g) Any person representing any of the persons identified in (a) to (f) above.